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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,422	10/31/2001	Daniel G. Schkolnik	5038-147	9698

7590 04/30/2004

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1030 S.W. Morrison Street
Portland, OR 97205

EXAMINER

DINH, DUC Q

ART UNIT	PAPER NUMBER
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2674

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,422

Applicant(s)

SCHKOLNIK, DANIEL G.

Examiner

DUC Q DINH

Art Unit

2674

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1-9 recite “the improvement comprising the window being characterized by a substantially hourglass shape” (line 1-2 of independent claim 1) and the improvement comprising each of the plurality of windows being characterized by a substantially hourglass shape” (claim 5, lines 2-3). The disclosure, when filed, discloses “a wheel, rather than the claimed improvement, comprising a optical window”. Furthermore, how the improvement (i.e., being not a device or apparatus) can comprise a window, so as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The examiner examines the application based on the best understood of the claim language.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (U. S. Patent No. 4,906,843), hereinafter Jones.

In reference to claims 1-3, 5-7, 10-12 and 15-17, Jones shown in Fig 3-4, an optical window for an optical device having inside sectors 74 (corresponding to optical windows) with moiré pattern effect shape (claim 1) comprising; an optical (stroboscopic) disc 59 and 60 comprising a circular disc having a plurality of windows arranged adjacent a periphery of the discs (claim 5); light sources 62 and 64, light detectors 66 and 68, light paths is defined between the light sources and the detectors; light emitted from a light sources 62 and 64 are detected by detectors 66 and 68, a (stroboscopic) discs 59 and 60 are interposed therebetween (claims 10 and 15), such that the light passes through the sectors 74 of the discs (see col. 5, lines 2—39) to create moiré pattern effect.

Jones discloses all the subject matters claimed with the exception that the window(s) being characterized by a substantially hourglass shape (claims 1, 5, 10, 15), first pair of opposite sides disposed so that the end of the opposed sides are spaced farther apart than the center of the opposed sides (claims 2, 6, 11, 16), wherein the first pair of opposed sides describe hyperbolic curve (claims 3, 12, 17). It would be obvious to one having ordinary skill in the art to change the shape of the optical window as desired as was judicially recognized with **In re Dailey, 149 USPQ 47 (CCPA 1976)** which recognizes that CHANGE IN FORM OR SHAPE of well known elements is normally not directed toward patentable object matter.

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In reference to claims 4, 8, 13 and 18, Jones discloses that in the computer mouse, light passes through sectors patterns may be made of alternating opaque and transparent (col. 5, lines 24-27).

In reference to claims 9, 14 and 19 the AAPA Fig. 2 shown that each pattern 74 (see Fig. 3 and 5) is elongated to define a long axis being substantially congruent with the radius of the discs as claimed.

Response to Arguments

4. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DUC Q DINH** whose telephone number is **(703) 306-5412**. The examiner can normally be reached on Mon-Fri from 8:00.AM-4:00.PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **RICHARD A HJERPE** can be reached on **(703) 305-4709**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

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Hand-delivery response should be brought to: Crystal Park II, 2121 Crystal Drive,
Arlington, Va Sixth Floor (Receptionist)

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the Technology Center 2600 Customer Service Office whose telephone
number is (703) 306-0377.

DUC Q DINH
Examiner
Art Unit 2674

DQD
April 28, 2004


REGINA LIANG
PRIMARY EXAMINER